

PLANNING COMMISSION MINUTES

May 5, 2009

7:00 P.M.

Present: Vice Chairman Tom Smith, Dave Badham, Michael Allen, Barbara Holt, Ray Keller, City Council Representative Beth Holbrook, City Engineer Paul Rowland, Planning Director Aric Jensen, and Recording Secretary Connie Feil.

Absent: Chairman Clark Jenkins and City Attorney Russell Mahan.

Tom Smith welcomed all those present and had all those present introduce themselves.

Ray Keller made a motion to approve the minutes for April 21, 2009 as written. Barbara Holt seconded the motion and voting passed by majority vote. Dave Badham abstained from voting.

1. PUBLIC HEARING - Consider granting a variance to allow building a garage in the front and side yard setback located at 369 W. 800 S., Brett and Barbara Faust, applicants.

Barbara Faust, applicant, was present. Aric Jensen explained that Brett and Barbara Faust are requesting an approval of a variance from the provisions of Section 14-4-105 Yard and Setback Requirements of the City Land Use Ordinance in order for them to construct a detached accessory structure in their front yard.

Last year, the applicants received a building permit to construct a detached garage in their rear yard. The structure was subsequently inspected by the City during the construction process and received final building inspection approval on September 4, 2008. After completing the detached garage, the applicants began construction on a detached carport in the front yard – but this time without a permit. In April of this year, when the applicants were approximately 75% through the construction process, the City became aware of the unpermitted structure and issued a stop work order. Mr. Jensen met with the applicants and discussed their options – which included demolition, moving the structure to a location that meets City Ordinance, and applying for a variance.

The structure is a pole style garage, open on three sides with a solid end, approximately 20' long and 14' wide. It runs parallel to the street, and in its current configuration is approximately 23' from the front property line, and 3' from the side property line. The required front yard setback is 25', and the side yard setback is 8'.

The following is a conforming copy of Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances (underlining added to indicate necessary findings for approval):

10-9a-702. Variances. (1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance. (2) (a) The appeal authority may grant a variance only if: (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances; (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone; (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and (v) the spirit of the land use ordinance is observed and substantial justice done. (b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship: (A) is located on or associated with the property for which the variance is sought; and (B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. (ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic. (c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances: (i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same zone. (3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met. (4) Variances run with the land. (5) The appeal authority may not grant a use variance. (6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will: (a) mitigate any harmful affects of the variance; or (b) serve the purpose of the standard or requirement that is waived or modified.

One of the requirements for granting a variance is that an approval authority must determine that a proposed variance request meets all of the provisions of the Code, or else it cannot grant a variance. The applicants appear to be in conflict with 10-9a-702 (2)(b)(ii), which states that a requested variance cannot be a self created or economic hardship. If the applicants had applied for a building permit, they would have been made aware that the proposed structure was in an improper location, and this situation would have been avoided. It is difficult to argue that the current problem was not self created. There is sufficient room in the front yard to move the structure and still meet all of the setbacks. The only thing preventing moving the structure is the time and cost involved, which are generally considered to be economic hardships.

Staff is not overly concerned about the 2' discrepancy in the front yard area because this is an older part of town and many of the structures were built with widely varying front yard setbacks. The real concern is the side yard setback with the neighbor to the west. Staff's recommendation

is to move the structure laterally 5' to the east, parallel with the existing poured parking pad. This could be accomplished at a minimum cost and effort, and would bring the structure into substantial compliance with the City Ordinance. Mr. Jensen also recommended approving a 2' variance regarding front yard setbacks, as shown on the proposed site plan, based on the findings in the staff report regarding the history of building setbacks in this neighborhood.

Barbara Faust explained that moving the structure 5 feet would place the garage in front of her living room window and it would also be over the main gas and water lines that run to the home. Mrs. Faust explained that the home was built with a 6-foot side yard and she asked if the variance could be granted to allow the garage be built with the same 6-foot side yard.

The public hearing was opened for all those with comments or concerns.

Kerry Everett, residing at 427 W. 850 S., had concerns regarding the large amount of hard surfaces on this property. With the house, the huge garage, and now a carport, Mr. Everett feels that the property is turning into a cement pad.

John Best, residing at 402 W. 850 S., also had concerns with the large garage and amount of structures on this small property. Mr. Best has talked with some of the neighbors and they have the same concerns.

Mike Dabel, residing at 411 W. 800 S., explained that he had some concerns with the height of the garage. Mr. Dabel noted the upgrades that have been made to the property and how they have improved the neighborhood.

Mr. Jensen stated that he had received several letters in support of the variance, including one from the adjacent property owner to the west. He also mentioned that he will verify the amount of hard surface after calculating the footage from this addition to make sure that it complies with the ordinance.

The public hearing was closed without further comments.

There was a discussion regarding the two issues, one of a 2-foot front yard, and the second with the 5-foot side yard. The Commission had no problems with the front yard set back but they did have concerns with the side yard set back. If a building permit had been obtained, this situation could have been avoided.

After the discussion, Barbara Holt made a motion to approve the variance to allow a 23-foot front yard setback and allow a 6-foot side yard set back that will align the carport with the existing home located at 369 W. 800 S., subject to the verification of the allowable hard surface. Beth Holbrook seconded the motion and voting past by majority vote. Vice Chairman Tom Smith, City Council Representative Beth Holbrook, Ray Keller, Barbara Holt, and Michael Allen voted "aye." Dave Badham voted "nay."

2. Wasatch 2040 Growth Principles Presentation, Val Halford, WFRC.

Val Halford was not present so this item was cancelled.

Mr. Jensen mentioned that there is only one item for the meeting scheduled for 5-19-09, and asked the Commission to reconvene on 6-2-09 when there would be more than one item on the agenda. It was agreed to wait until 6-2-09 for the next Planning Meeting. There were no other items to be discussed.

Meeting adjourned at 7:35 P.M.